



Federal Communications Commission
Washington, D.C. 20554

February 15, 2008

DA 08-387

In Reply Refer To:

1800B3-BSH

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Ms. Andrea Cano, Representative
Oregon Alliance to Reform Media
917 S.W. Oak Street, #422
Portland, OR 97205

Mr. Bruce Fife, President, Local 99
American Federation of Musicians
325 N.E. 20th Avenue
Portland, OR 97232

In re: KUFO-FM, Portland, Oregon
Facility ID No. 26932
File No. BRH-20050929AVJ
Application for Renewal of License

Informal Objections

Dear Ms. Cano and Mr. Fife:

This letter concerns the captioned application (“Renewal Application”) filed by CBS Radio Stations Inc. (“CBS”) to renew the license of Station KUFO-FM, Portland, Oregon (the “Station”). On January 9, 2006, two separate Informal Objections to the Renewal Application were filed, one by the Oregon Alliance to Reform Media and the second by Local 99 of the American Federation of Musicians (collectively, the “Objectors”).¹ Because the Objectors raise nearly identical issues in their respective Informal Objections, we address them jointly. For the reasons set forth below, we deny the Informal Objections and grant the Renewal Application.

Background. Objectors state that they monitored the Station for a period of several months, from August through December of 2005. Based on “hundreds of hours of informal listening”² to the Station during this period, Objectors contend that the Station “is falling far short of ‘localism’ expectations as required by the FCC”³ and request that the Commission deny the Renewal Application.

Discussion. In evaluating an application for license renewal, the Commission’s decision is governed by Section 309(k) of the Communications Act of 1934, as amended, (“Act”).⁴ That section provides that we are to grant the renewal application if, upon consideration of the application and

¹ On April 4, 2007, CBS filed a Consolidated Opposition to Informal Objections (“Opposition”).

² Oregon Alliance to Reform Media Informal Objection at first unnumbered page.

³ *Id.*

⁴ 47 U.S.C. § 309(k)(1).

pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Act or the Commission's Rules ("Rules"); and (3) there have been no other violations which, taken together, constitute a pattern of abuse.⁵ If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”⁶

Objectors first take exception to the lack of locally produced music that is aired on the Station. The Objectors also oppose the Station's broadcasting of public affairs programming on Sunday mornings, rather than during peak, drive-time hours. Additionally, Objectors complain about certain aspects of the “Battle of the Bands” contests sponsored by the Station in 2004 and 2005. Finally, Objectors assert that the Station's public file did not include political records from 2003 and 2004, and that a letter of complaint sent by a volunteer from one of the Objectors' organizations was not in the Station's public file.

The First Amendment rights of broadcasters and the noncensorship provisions of the Act⁷ provide licensees broad discretion in the selection and scheduling of programming best suited to address issues facing their communities. The Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.⁸ Further, the Commission will not interfere with the exercise of a licensee's programming judgment where there is no showing that the licensee consistently and unreasonably ignored matters of public concern.⁹ The Objectors have made no such showing.

While the Objectors might prefer that the Station broadcast more locally produced music, there is no statutory or regulatory requirement that it do so.¹⁰ Likewise, the Station's decision to broadcast public affairs programming on Sunday mornings does not violate any Rule or policy. In the Opposition, CBS notes that each of the Station's weekly public affairs programs includes coverage of issues that are important to the community, and that the producer and host of the public affairs programming is a long-time Portland area resident who has served in this position for more than seven years and is intimately familiar with community issues.

⁵ *Id.* The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, Order, 11 FCC Rcd 6363 (1996).

⁶ 47 U.S.C. §§ 309(k)(2), 309(k)(3).

⁷ *See* 47 U.S.C. § 326.

⁸ *See WGBH Educational Foundation*, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978) (Commission will not deny renewal application based on the opinion of a viewer, or group of viewers, as to what constitutes “good” programming).

⁹ *See, e.g., Columbia Broadcasting System, Inc.*, Memorandum Opinion and Order, 51 FCC 2d 273, 277 (1975) (programming challenge must make specific allegations of fact showing that licensee's overall programming could not reasonably have met the problems, needs, and interests of people within the station's service area).

¹⁰ *See Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12440 (2004) (Commission has not attempted to define the programming that a broadcaster should air to serve the needs and interests of its local community.)

Regarding the Station's 2004 Battle of the Bands contest, Objectors complain that a condition for entry was the release of all "copyright ownership, in perpetuity, to the station"¹¹ of any audio or video recording of their performance at the concert. This contest term, of which entrants were duly informed, violates no Commission Rule or policy. Objectors also criticize the 2005 contest because the winning band was determined by a boxing match, which Objectors view as discriminatory. Again, Objectors fail to present any specific allegations of fact concerning the contest to establish a *prima facie* showing of a violation of any Commission Rule or policy. Furthermore, as noted by CBS, it is unclear how this contest is relevant to the determination as to whether the Station's license should be renewed.

In the Opposition, CBS states that, after reading the Objectors' allegations concerning the inability to locate the 2003 and 2004 political portion of the Station's public file, the licensee examined the public file and "discovered that the 2003 political folder had been placed in the 2002 Public Affairs section within the public file, and the 2004 political folder had been placed in the Programming section within the public file."¹² CBS asserts that it does not know whether the files had been inadvertently misplaced by Station staff or a member of the public, but avers that the material "was missing out of place but contained within the Station's public file and available to the public."¹³ Based on the above, we find no violation of the public file rule,¹⁴ but we remind CBS to exercise care to ensure the public's full access to the materials in the Station's public file. In regard to the missing letter of complaint, CBS responds that the Informal Objection is silent as to when the letter was supposedly sent, so it is unable to ascertain if such correspondence was submitted within the three year period for which the public file rule requires its retention.¹⁵ CBS adds that the Station's public file contains more than 30 pieces of correspondence received from the public in 2005, many of which are critical of Station operations. Based on this record, we cannot conclude that a public file rule violation has occurred.

Accordingly, we find no evidence of serious violations of the Act or the Rules or other violations that, when considered together, evidence a pattern of abuse. Further, we find that Station KUFO-FM served the public interest, convenience, and necessity during the subject license term. Thus, there is no need for further inquiry regarding grant of the subject renewal application and we will grant that application.

Conclusion. Accordingly, for the reasons set forth above, the two Informal Objections ARE DENIED. Finally, because the subject application is in full compliance with the Act and the Rules, and

¹¹ Oregon Alliance to Reform Media Informal Objection at second unnumbered page.

¹² Opposition at 4.

¹³ *Id.*

¹⁴ See 47 C.F.R. § 73.3526.

¹⁵ See 47 C.F.R. § 73.3526(e)(9)(i).

finding that the public interest, convenience, and necessity would be served thereby, the application for renewal of license for Station KUFO-FM, Portland, Oregon (File No. BRH-20050929AVJ) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: CBS Radio Stations, Inc.
Steven A. Lerman, Esq.